In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 806

UNITED SERVICES AUTOMOBILE ASSOCIATION, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The district court rendered no opinion. The opinion of the court of appeals (Pet. App. 1–3) has not yet been reported.

JURISDICTION

The judgment of the court of appeals was entered on July 9, 1970. The petition for a writ of certiorari was filed on October 5, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the courts below correctly construed a serviceman's automobile liability insurance policy to require payment to the United States for medical treat-

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ment provided to the serviceman's son, where the policy required the company to pay "all medical expenses incurred * * * to or for" the serviceman and his family.

STATEMENT

Petitioner was the insurer under an automobile liability insurance policy issued to Major Busch. Part II of that policy, entitled "Expenses for Medical Services," obligated petitioner as follows:

> To pay all reasonable expenses incurred within one year from the date of accident for necessary medical, surgical, X-ray and dental services * * *
> Division 1. To or for the named insured and each relative who sustains bodily injury * * * (c) through being struck by an automobile or trailer of any type.

Part II provided further that the $5000 limit applicable to each person "is the limit of the company's liability for all expenses incurred by or on behalf of each person who sustains bodily injury." The portion of the policy entitled "Conditions" stated that

> The company may pay the injured person or any person or organization rendering the services and such payments shall reduce the amount payable hereunder for such injury.

The officer's son was struck by an automobile while crossing the street. Since he was the dependent of a member of the armed forces, he was entitled to and did receive at government expense hospital and medical care and treatment valued at $2,223.75. 10 U.S.C. 1076. Following petitioner's refusal to pay the ex-

penses incurred by the United States for such care, this suit was brought to recover those expenses. The district court granted the government's motion for summary judgment. The court of appeals affirmed on the ground that under the language of the policy, "the United States was clearly a third-party beneficiary" and entitled to recover on the policy (Pet. App. 2).

DISCUSSION

The case presents no issue warranting further review. It involves only a narrow question of contract interpretation.

The decision of the court of appeals was correct. By the terms of the policy petitioner agreed to pay medical expenses incurred "to or for the named insured"; further its liability extended to expenses incurred "by or on behalf of each person who sustains bodily injury." This language does not limit payment of expenses to those incurred by the insured, but contemplates that others who are legally obligated to provide medical care "for" the named insured and do so may recover under the policy.[1] Petitioner's undertaking, as expressed by the disjunctive "or", is

[1] Compare the broad assumption of liability in regard to medical payments with the company's agreement contained in "Part I—Liability." There the company agreed only "to pay on behalf of the insured all the sums which the insured shall become legally obligated to pay as damages." Had the company intended in its medical payments coverage to pay only those expenses which the serviceman himself became obligated to pay, it could have used similar language in Part II.

to pay either to the insured or to one who has incurred such expenses for him. 10 U.S.C. 1076 requires the United States to provide medical care for a serviceman's dependents.

Petitioner, which insures only officers in the armed forces (Pet. 3), must have known when it issued this policy to Major Busch that the expenses for any medical treatment he or his family needed would be incurred by the United States. The government is within the terms of the policy and entitled to recover on it. See *Government Employees Insurance Company* v. *United States*, 349 F. 2d 83, 85 (C.A. 10), certiorari denied, 382 U.S. 1026, rehearing denied, 383 U.S. 939;[2] Joseph C. Long, *Government Recovery Beyond the Federal Medical Care Recovery Act*, 15 South Dakota Law Review 20, 25 (Winter, 1969).

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[2] The question presented there was whether the insurance company intended to insure the government against liability under the Tort Claims Act by an automobile liability policy purchased by a rural mailman. Since only the United States, and not the mailman, could be sued as a result of any accident which occurred while the mailman was driving his route, the court held the insurance company intended to insure the government. The court noted:

"* * * When the policy issued to [the employee] was renewed, therefore, the Government Employees Insurance Company was bound to know that only the United States was suable for the torts of its employees committed within the scope of their employment. The company's intention to insure the United States is implicit in its conduct [in renewing the policy]. * * *"

Similarly, because petitioner here must have known that the United States and not the serviceman would incur the medical expenses, its intent to insure the government is plain.

Petitioner's suggestion that the United States may not be a third-party beneficiary of an insurance policy purchased by its employee or by a serviceman has been uniformly rejected by the federal courts. See, *e.g.*, *Government Employees Insurance Co.* v. *United States*, 376 F. 2d 836 (C.A. 4) (recovery under the uninsured motorist section of a serviceman's insurance policy); *United States* v. *Myers*, 363 F. 2d 615 (C.A. 5) (recovery under the liability provisions of a postal employee's automobile insurance contract); *Government Employees Insurance Company* v. *United States*, 349 F. 2d 82, 85 (C.A. 10), certiorari denied, 382 U.S. 1026; *Grant* v. *United States*, 271 F. 2d 651 (C.A. 2); *United States* v. *United Services Automobile Association*, 312 F. Supp. 1314 (D. Conn.), appeal pending (C.A. 2, Nos. 35317, 35318); *United States* v. *Commercial Union Insurance Group*, 294 F. Supp. 768 (S.D.N.Y.). Where, as here, the United States comes within the policy language, the government may sue directly on the contract.[3]

The decision below does not conflict with *United States* v. *St. Paul Mercury Indemnity Co.*, 238 F. 2d 594 (C.A. 8), affirming 133 F. Supp. 726 (D. Neb.). That case involved a health benefits policy containing language which made it clear that only the veteran who purchased the policy could recover on it. St. Paul Mercury's obligation was only "*to pay the insured* the benefits

[3] Petitioner suggests that had it intended to include the government under the policy, the premium would have been higher (Pet. 6). This contention was not raised either in the district court or in the court of appeals, and there is no evidentiary support therefor in the record.

herein provided toward the *expenses actually incurred by the Insured* * * *" (133 F. Supp. at 729, emphasis supplied). Because this language excluded a direct suit by the government, the Veterans Administration took an assignment from the veteran, sued as an assignee, and was denied recovery because as an assignee it had no greater rights than the veteran. In contrast, petitioner did not limit its obligation solely to paying the insured, but agreed to pay expenses incurred "to or for" the insured.

There is similarly no conflict between the decision below and state court decisions construing similar medical payments provisions. The cases upon which petitioner relies (Pet. 7–10) all involved suits by servicemen who sought, on facts similar to the instant case, to recover expenses incurred by the government in treating them; in none of these cases did the United States, which had incurred the expenses, bring suit directly on the contract.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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NOVEMBER, 1970.

U.S. GOVERNMENT PRINTING OFFICE: 1970